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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ANTOINE DAVIS,

11 Petitioner,

12 v.

13 M.A. SMELOSKY, Warden

14 Respondent.

Civil No. 08cv2100 JAH (RBB)

**ORDER DENYING MOTION FOR  
CERTIFICATE OF APPEALABILITY**


15 On November 11, 2008, Petitioner, appearing *pro se* filed a motion for enlargement  
16 of time to file petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> This  
17 Court denied the motion without prejudice upon finding the Court is without jurisdiction  
18 to extend the one-year statute or limitations of 28 U.S.C. § 2244(d)(1)(A)-(D). On  
19 December 8, 2008, Petitioner filed a notice of appeal (Doc. No. 3) and motion for a  
20 certificate of appealability (Doc. No. 4).

21 A certificate of appealability is authorized “if the applicant has made a substantial  
22 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this  
23 threshold showing, a petitioner must show : (1) the issues are debatable among jurists of  
24 reason; or (2) that a court could resolve the issues in a different manner; or (3) that the  
25 questions are adequate to deserve encouragement to proceed further. Lambright v.  
26 Stewart, 220 F.3d 1022, 1024-25 (9<sup>th</sup> Cir. 2000)(citing Slack v. McDaniel, 529 U.S. 473  
27 (2000) and Barefoot v. Estelle, 463 U.S. 880 (1983)).

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<sup>1</sup>Petitioner had not filed a petition for writ of habeas corpus.

Petitioner seeks to appeal the Court's denial of the motion for enlargement of time. He maintains the ruling was erroneous, because he is entitled to a finding of an impediment under section 2244(d)(1)(B) or equitable tolling. This Court finds that a certificate of appealability is not warranted in this instance because the denial of the motion for enlargement of time to file a petition for writ of habeas corpus under the circumstances is not an issue debatable among jurists of reason nor could any other court resolve the issue in a different manner. Lambright, 220 F.3d at 1024-25. Accordingly, this Court **DENIES** Petitioner's motion for a certificate of appealability.

DATED: December 10, 2008

  
JOHN A. HOUSTON  
United States District Judge